

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT MEDINA, JR.,

Plaintiff,

v.

GUSTAVO MARTINEZ, *et al.*,

Defendants.

Case No. 1:23-cv-00935-KES-EPG (PC)

ORDER DECLINING TO ORDER  
SERVICE OF THE SUBPOENAS  
COMPLETED BY PLAINTIFF

Plaintiff Robert Medina, Jr. was confined in Fresno County Jail (FCJ) at the time the events giving rise to this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff proceeds *pro se* and *in forma pauperis* on his Eighth Amendment claim against Defendants J. Alvarez, Gustavo Martinez, and First-Name-Unknown (FNU) Martinez.

Before the Court are subpoenas and USM forms (ECF No. 40) submitted by Plaintiff in response to Court's Order Permitting Limited Discovery (ECF No. 34) and Order Permitting Plaintiff to Re-Submit forms (ECF No. 36). For the reasons stated below, the Court declines to order service of these documents.

On September 13, 2024, waivers of service mailed to both Gustavo Martinez and FNU Martinez at FCJ by U.S. Marshals were returned unexecuted. (ECF No. 32). Notes indicate that G. Martinez is no longer at FCJ and that FNU Martinez could not be identified, and that more information is needed. (*Id.* at 1, 3). To obtain information to identify and serve these

1 Defendants, on September 25, 2024, the Court issued Order Permitting Limited Discovery  
2 (ECF No. 34), allowing Plaintiff to seek discovery through a subpoena duces tecum to request  
3 documents related to the identity and current addresses of Defendants G. Martinez and FNU  
4 Martinez. The Court provided instructions for filling out subpoena forms and advised Plaintiff  
5 that, if Plaintiff wished to use such a subpoena, “within thirty days of this order, he should fill  
6 out forms AO 88B and USM-285 for each defendant . . . and return them to the Court.” (ECF  
7 No. 34 at 2). The Court then served the Order and the forms on Plaintiff.

8 On October 18, 2024, the Court received completed forms AO 88B and USM-285 from  
9 Plaintiff. Plaintiff addressed subpoenas to “All photos of all officers that night” and listed date  
10 and time of production as December 15, 2022 (ECF No. 35 at 2, 4). Plaintiff also completed  
11 “proof of service” sections of the subpoena forms (*id.* at 3, 5) and checked boxes on the USM-  
12 285 forms in the sections marked “SPACE BELOW FOR USE OF U.S. MARSHAL ONLY –  
13 DO NOT WRITE BELOW THIS LINE” (*id.* at 7, 8). Finally, the USM-285 forms list G.  
14 Martinez and J. Alvarez as names of the individuals to be served. (*Id.*)

15 The Court was unable to direct service of those documents as they have been  
16 completed. (ECF No. 36). The Court found that subpoenas were not addressed to any proper  
17 entity. (ECF No. 36 at 2). They did not identify documents that Plaintiff sought. Plaintiff had  
18 listed a time of production as years in the past and improperly filled out the proof of service,  
19 which he was supposed to leave blank. (*Id.*)

20 The Court gave Plaintiff “one final opportunity” to complete the subpoenas properly.  
21 (ECF No. 36). The Court re-sent the AO 88B and USM-285 forms to Plaintiff on October 22,  
22 2024, along with even more detailed instructions on completing the subpoena forms:

23  
24 Since Plaintiff is seeking information about employees at Fresno County Jail,  
25 Plaintiff may choose to address the subpoena to Fresno County Jail. In the  
26 space between the lines starting with “production” and “place,” Plaintiff should  
27 identify the documents he is seeking that would assist him in identifying and  
28 serving Defendants G. Martinez and FNU Martinez, such as any documents  
listing their addresses and phone numbers, or photos of the officers on duty the  
day of the alleged incident. The place and date and time of the production refer  
to the date on which the documents should be produced to the Plaintiff.

1           ...  
2 Proof of service sections of the subpoena forms should be left blank, as well as  
3 the lower portions of USM-285 "Process receipt and return" forms. These  
4 sections will be filled out by U.S. Marshals once they serve the subpoenas.  
5 (ECF No. 36 at 2–3).

6           On November 13, 2024, the Court received a second set of subpoena forms completed  
7 by Plaintiff. Plaintiff addressed one subpoena to "Gustavo Martinez" and the other to  
8 "unknown," left the space describing the documents he seeks to obtain blank, and once again,  
9 signed Proof of Service portions of the subpoena forms. Plaintiff left the "serve at" portions of  
10 USM-285 form blank, failing to identify the person or entity to be served and the address at  
11 which they are supposed to be served.

12           The Court is unable to direct the service of these documents. Despite detailed  
13 instructions provided to Plaintiff, these subpoenas are not addressed to a proper entity. They do  
14 not identify documents that Plaintiff seeks. Plaintiff left the portions of the forms he was  
15 supposed to fill out—"serve at", "production" fields—blank, and improperly filled out the  
16 proof of service portions, which he was instructed to leave blank.

17           It remains Plaintiff's obligation to identify and serve Defendants G. Martinez and FNU  
18 Martinez by the deadline set in the Court's order (ECF No. 34): January 23, 2025.

19           **Failure to identify and serve Defendants G. Martinez and FNU Martinez by this  
20 deadline may result in the dismissal of these Defendants.**

21  
22 IT IS SO ORDERED.

23  
24 Dated: December 2, 2024

25  
26 /s/ *Evan P. Gross*  
27 UNITED STATES MAGISTRATE JUDGE  
28